Krishna Jayaram v Public Prosecutor

HIGH COURT (SINGAPORE) - MAGISTRATE'S APPEAL NO 228 OF 1984
CHAO HICK TIN JC
27 JUNE 1989

Criminal Law - Corruption - When payments corruptly accepted - Whether commission paid to insurance agent for sale of insurance policy could amount to corrupt gratification - Criminal Procedure Code, s 261 - Evidence Act (Cap 97, 1985 Ed), s 8 illus (e) & s 116 illus (b) - Prevention of Corruption Act (Cap 241, 1985 Ed), ss 6(a), 9 & 24

Evidence - Relevancy - Attempt by accused to suborn prosecution witnesses - Accomplice evidence - Effect of such evidence

Criminal Procedure - Finding of fact of trial court - When appellate court entitled to intervene - Grounds of decision of trial judge - Failure to deal with all the arguments raised by counsel - Whether judgment affected - Sentencing - Corruption - Factors to be considered

The appellant was charged with 24 counts of corruption under s 6(a) of the Prevention of Corruption Act. He was convicted on all counts and sentenced to varying periods of imprisonment which totalled a continuous period of three years' jail. He appealed against both the convictions and the sentences. The appellant faced four sets of charges, the first relating to receiving corrupt gratification. The appellant argued that the judge had failed to deal properly with the arguments raised at the trial, in his grounds of decision. It was also said that there was cross-infection in that the judge had failed to consider the evidence of each charge separately. The judge was also wrong to accept the evidence of a prosecution witness, who was an accomplice, without corroboration. It was argued that the judge had also placed too much reliance on a meeting between the appellant and a prosecution witness during which it was alleged that the appellant had attempted to persuade the latter to change his story to government investigators. As regards the sentences passed on the appellant, it was argued that they were manifestly excessive as the judge took into account the fact that the appellant had tried to suborn prosecution witnesses, that the appellant's employer had not suffered loss, the appellant had not solicited the bribes as regards many of the charges, the appellant was not a public officer and the case had resulted not just in the appellant losing his job but in losing his entire career in the banking field.

Held, allowing the appeal on some of the charges and reducing the overall sentence:

(1) Looking at the grounds of decision, it was clear that there was no cross-infection of charges.

(2) As regards the effect of accomplice evidence, s 116 illus (b) of the Evidence Act dealt with the weight of such evidence. In addition, s 24 of the Prevention of Corruption Act was also pertinent. The application of both these provisions is for the court to decide on the facts of each case.

(3) Case law has established that on a question of fact, the circumstances under which an appellate court may disturb a finding of fact is limited. If the appellate court feels that the trial judge has not taken proper advantage of his having seen and heard the witnesses, then the matter will be at large for the appellate court. The value of having heard the witnesses will of course vary according to the class of case.

(4) Just because the points raised are not expressly dealt with in the judge's grounds of decision does not mean that the decision of the judge is bad. The appellate court is entitled to, and indeed must, review the evidence to determine whether there is sufficient evidence to sustain the charge and whether on the evidence the charge is bad.

(5) The fact that the overdraft extended to Ling Tian Song's company was within the appellant's authority was not relevant as the real issue was whether Ling was allowed to draw from his account even when the account had gone beyond the authorized overdraft limit. Although the appellant was entitled to put up the necessary papers to increase the overdraft limit, he had not done so. Case law showed that one could be guilty of taking a bribe even if it was not proved that one had shown favour. Having reviewed the record of evidence, the court was of the opinion that there was ample oral and documentary evidence for the judge to find the appellant guilty on the first group of 15 charges.

(6) As to the allegation that the judge placed too much reliance on the appellant's meeting with Ling, the person who bribed him, the court could not agree to this. The judge found that the appellant had instigated the meeting for the sole purpose of persuading Ling to change his statement to the CPIB. Section 8 illus (e) of the Evidence Act showed that such conduct was relevant to the charges against the appellant. It was conduct consistent with that of a guilty mind and the judge was entitled to draw such inference therefrom as he deemed fit.

(7) On the evidence, the judge found Ling to be a witness of truth and there was no reasonable ground to disturb the finding. Accordingly, the convictions of the appellant on the first group of charges were neither against the weight of the evidence nor wrong in law, and should be upheld.

(8) Whether a payment was corruptly obtained and accepted is a question of fact to be determined by the court in the light of all the circumstances of each case. Having regard to what Ling said about taking out the insurance policy for which commission was paid to the appellant, and also to the state of account of Ling's company, the court was satisfied that the appellant was correctly convicted for corruptly receiving the commission. The fact that an insurance policy was actually issued did not mean that the receipt of the commission could not be corrupt.

(9) As regards the charges of receiving money from Firoz Khan ('Firoz'), his evidence was often inconsistent and at times illogical. The judge had not dealt adequately with these problems. The convictions on four charges of receiving corrupt payment from Firoz should not be allowed to stand.

(10) As regards the commission received by the appellant as a result of selling a life insurance policy to Firoz, the charge could not stand. The test was whether the appellant had applied undue pressure on Firoz and that caused Firoz to take out the policy. The judge failed to take into account the fact that Firoz was a man of the world. This important aspect of evidence was not adequately considered.

(11) In addition, it had been shown in relation to the other four charges that the evidence of Firoz was less than reliable. The judge did not appear to focus his mind on the right issues and/or sufficiently consider the evidence in determining the guilt or otherwise of the appellant.

(12) Although the prosecution witness, Cheo was an accomplice, the court could convict on the uncorroborated evi-

dence of an accomplice. In addition, another witness's testimony corroborated that of Cheo's.

(13) Having reviewed that evidence, it had not been shown that the convictions on the two charges were against the weight of evidence. Nor had the judge misdirected himself or had he misconstrued any material fact. The two convictions relating to the third group of charges were thus upheld.

(14) With regard to the fourth set of charges, the judge had misconstrued the evidence of one of the prosecution witnesses and had placed on it a significance which was not warranted. In addition, there were important discrepancies in the evidence of two of the main witnesses. The judge had also failed to consider a material question of whether the appellant would have asked for a post-dated cheque if he wanted a loan because his father was sick. All these factors compel the setting aside of the convictions relating to the fourth set of charges.

(15) Although there had been a long delay between the trial and the present decision, there had been no prejudice to the appellant as he had been on bail. It was accepted that the appellant had worked his way up to a senior position but now found everything in ruins. Having considered all the circumstances, a fine would be wholly inadequate. This was not a case of an isolated act of corruption. The amounts involved were substantial and the appellant had abused his position of trust.

(16) The appellant's arguments regarding the suborning of prosecution witnesses, the fact that on most of the charges, the appellant had not solicited the bribes, the fact that the appellant was not a public officer and the fact that the appellant had lost his whole career in the banking field were accepted. Taking into account these factors, the sentences imposed were manifestly excessive. The sentences were to be reduced such that the appellant would serve a total prison sentence of 12 months. He would also be required to pay a penalty of $54,078 as required under s 31(1) of the Prevention of Corruption Act. The appeal was therefore allowed in part.

Cases referred to

1 *Antonio D Caldeira* v *Frederick A Gray* [1936] 1 All ER 540; [1936] MLJ 137 (follid)
2 *Watt* v *Thomas* [1947] AC 484 (follid)
3 *R* v *Carr* [1957] 1 WLR 165 (follid)
4 *Mohamed Ali bin Mohamed Iqbal* v *PP* [1979] 2 MLJ 58 (refd)
5 *R* v *Quinn* [1932] 23 Crim App R 198 (refd)
6 *Voon Chin Fatt* v *PP* [1948-1949] MLJ Supp 131 (distd)

Legislation referred to

Criminal Procedure Code s 261
Evidence Act (Cap 97, 1985 Ed) s 8 illus (e), s 116 illus (b)
Prevention of Corruption Act (Cap 24, 1985 Ed) ss 6(a), 9, 24

Michael Sherrard QC (*R Pala Krishnan* and *Amarjit Singh* with him) for the appellant.

Sowaran Singh (*Ahmad Zakaria* with him) for the Public Prosecutor.

Cur Adv Vult

Chao Hick Tin JC: The appellant was charged with 24 counts of the offence of corruption under s 6(a) of the Prevention of Corruption Act. At the end of a trial which lasted 26 days, the appellant was convicted. He was sentenced to varying periods of imprisonment (from two months to 12 months), with three sentences of 12 months each ordered to run consecutively and the others concurrently with the said three sentences. In other words, he was sentenced to serve a total of three years' imprisonment.

The charges fall into four groups. The first group, consisting of 16 charges, involved one Ling Tian Song of Asiaweld Shipbuilding (Pte) Ltd ('Asiaweld Shipbuilding'). The second group consisting of five charges involved one Firoz Khan of Aisha (Pte) Ltd. The third group consisting of two charges involved one Cheo Boon Teong. The last charge involved one Haji Moosa. At the material times the appellant was an assistant manager at the Banque Nationale de Paris, Singapore ('BNP').

This appeal is against both conviction and sentence on all the 24 charges. Section 261 of the Criminal Procedure Code provides that a conviction shall not be reversed or set aside unless it is shown to be wrong in law or is against the weight of the evidence and in the case of a sentence shall not be disturbed unless it is manifestly excessive or inadequate in the circumstances of the case.

Mr Sherrard, counsel for the appellant, has argued the appeal on the basis of the four groupings identified above. But there is one charge in the first and second groups which requires some special consideration because it involved the receipt by the appellant of a commission on account of the sale of a life policy. One general criticism of Mr Sherrard's in relation to the decision of the learned district judge on all the charges is that the district judge has failed to carefully weigh the evidence presented to the court. He complained that the grounds of decision are too brief and wholly inadequate and do not address the issues raised by the defence, let alone adequately. He said it is not known which of the evidence of the witnesses the district judge accepted or rejected in whole or in part or why. He argued that the evidence of the prosecution witnesses, who had been discredited, was accepted without any good reasons being offered. Even the documentary evidence was far from satisfactory or consistent. Accordingly, he contended that the convictions are against the weight of the evidence. I do not wish at this stage to make any comments on these general remarks of counsel except to say that the fact that the grounds of decision are not as elaborate as the appellant's counsel would like them to be (22 pages in double spacing in all) does not necessarily mean that the district judge did not carefully consider the evidence presented at the trial. Even Mr Sherrard conceded that a district judge need not and is not expected to deal with every issue or matter raised at the trial. But he argued that the grounds of decision must be able to withstand fair scrutiny and not be deficient as to matters of significance in relation to the issues of fact and/or law arising.

The second general criticism of Mr Sherrard's is that the district judge has failed to consider the evidence of each charge separately and has allowed cross-infection to

take place. He relied on two paragraphs on p 19 of the grounds of decision (p 738 of the record) to say that. But I think the two paragraphs must be viewed in the context. All that the district judge really tried to say there was to disagree with counsel on the value of the documentary evidence. Further, the way in which the district judge went about dealing with all the charges was in line with the manner in which counsel for the appellant made his submission in the court below, ie on the basis of the four groups. The district judge dealt with each group separately. In my opinion there was no question of cross-infection.

The third general point raised by counsel is that this case involved accomplice evidence, and that ordinarily an accomplice is presumed to be unworthy of credit. This point is expressly covered by s 116, illus (b) of the Evidence Act which provides that 'the court *may* presume - (b) that an accomplice is unworthy of credit and his evidence needs to be treated with caution'. Further, s 24 of the Prevention of Corruption Act ('the Act') provides that notwithstanding any rule of law or written law to the contrary, no witness shall be presumed to be unworthy of credit by reason only of any payment by him of any gratification to an agent. The application of both these two provisions is for the court to decide on the facts of each case.

Case law has clearly established that on a question of fact the circumstances under which an appellate court may disturb a finding of fact is limited. The Privy Council in the case *Antonio D Caldeira* v *Frederick A Gray*[1] said at p 541:

> ... their Lordships recognize that they cannot, merely because the question is one of fact, and because it has been decided in one way by the learned district judge, abdicate their duty to review his decision and to reverse it, if they deem it to be wrong. Nonetheless, the functions of a court of appeal, when dealing with a question of fact and a question of fact, moreover, in which, as here, questions of credibility are involved, are limited in their character and scope.

In the later case of *Watt* v *Thomas*,[2] Lord Thankerton declared the principles thus at pp 487-8:

> I do not find it necessary to review the many decisions of this House ... the principle ... may be stated thus:
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> I Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court, which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the district judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the district judge's conclusion.
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> II The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.
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> III The appellate court, either because the reasons given by the district judge are not satisfactory, or because it unmistakeably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question.

First group of charges

Under this group there are 16 charges. Fifteen of them involved sums of money allegedly given by Ling Tian Song, managing director of Asiaweld Shipbuilding ('Ling'), to the appellant between 23 May 1980 and 5 October 1982, as a reward for his granting overdraft facilities to Asiaweld Shipbuilding in excess of the authorized limit under its account with BNP. The sums given were all by cash cheques, of which on 12 occasions were for the sum of $2,000 and one occasion each for the sums of $2,800, $1,500 and $1,000.

The evidence led by the prosecution consisted mainly of the oral evidence of Ling and certain documentary evidence, including the 15 cash cheques and the cheque stubs. Ling said that he gave the moneys to the appellant because of the help which the latter had given his company in relation to the overdraft facilities granted by BNP.

The main points raised by counsel for the appellant against his conviction on the 15 charges are broadly the following:

(i) the overdraft which the appellant allowed Ling to draw was in each instance within the discretionary limit granted to the appellant under the general direction given by BNP to its commercial officers. The appellant had not granted overdraft which was beyond his general authority.

(ii) Ling was not able to explain satisfactorily why most often the sum given was for $2,000 and why on three occasions the sums were different.

(iii) Ling's evidence was that he made monthly payments to the appellant. If so why was it that within a short period in July 1981, and also in June 1982, three sums of $2,000 were given and why on the same day on 12 June 1982 two identical sums of $2,000 were paid.

(iv) The district judge failed to attach significance to the fact that two of the cheques were in fact paid into the account of a limited company, Grand Classics (Pte) Ltd.

(v) The documentary evidence by way of the payment vouchers and the cheque stubs, when viewed together with the cash book and the oral evidence of Yeo Eng Hoon (PW14), who provided management services to Asiaweld Shipbuilding, was clearly of doubtful veracity.

(vi) Not all the payment vouchers/cheque stubs referred to the appellant. In some instances, there

were inconsistencies between the payment vouchers and cheque stubs as to what those payments were for.

(vii) One payment voucher (exh P82) which was for a sum of $2,000 indicated that the sum was paid to 'Choo Ling Engineering Works'.

(viii) Ling said that he did not think it was wrong to give money to the appellant; if so, why did he make so many attempts in the cheque stubs and payment vouchers to hide that fact.

(ix) Ling said that through the introduction of the appellant he came to know one Ramesh from whom he got a loan of $200,000 (at 3% interest) in order to reduce Asiaweld Shipbuilding's overdraft at BNP and, as part of the arrangement to repay Ramesh, he gave ten post-dated cheques each of $26,000 to Ramesh. The evidence showed that only three cheques had been debited against Asiaweld Shipbuilding's account. Counsel asked what happened to the other seven cheques? Counsel submitted that Ling's evidence on this loan of $200,000 from Ramesh could not be true and his entire evidence must be viewed with suspicion.

As I have indicated, it is not necessary that a district judge should in his judgment or grounds of decision deal with all the detailed issues that were raised. The district judge has set out the facts on which he relied to hold the appellant guilty of the charges. Ling (PW3), quite clearly said in evidence that he gave, on diverse dates, 15 cash cheques of varying amounts (12 cheques for $2,000, one each for $1,000, $1,500 and $2,800) to the appellant at the latter's office at BNP. Ling said that the appellant never asked for payment but that he, on his own, gave the sums in question to the appellant as an expression of his appreciation for the assistance which the appellant rendered him with regard to the overdraft facilities extended to Asiaweld Shipbuilding. There was no doubt that Ling was not up to find fault with the appellant. From the evidence of Ling it was clear that the appellant was very helpful to Asiaweld Shipbuilding. Exhibit P169 showed that excess overdraft was granted by the appellant to Asiaweld Shipbuilding without authorization being obtained in accordance with the procedure laid down by BNP. What the appellant had done, in my view, fell outside the scope of the instructions contained in Information Note No 1149/81 (exh D18).

I do not accept the submission that just because the points raised above are not expressly dealt with in the grounds of decision, it must follow that the decision of the district judge is bad. This court is entitled to and, indeed, must review the evidence to determine whether there is sufficient evidence to sustain the charge and whether on the evidence the criticisms are valid. The fact that the overdraft extended to Asiaweld fell within the global limit of the discretionary power granted by the bank to the appellant as a commercial officer was not the point. The real question was: was Ling allowed to draw from his account even when the account had gone beyond the authorized overdraft limit? On that there was no doubt. The fact that the appellant could have put up the necessary papers to increase the limit was besides the point as he did not do so. Indeed one can be guilty of taking a bribe even if it is not proved that he has shown favour: see *R* v *Carr*[3] and s 9 of the Act.

As regards the amounts paid as gratification, Ling said it was based on a percentage of the overdraft drawn and that the percentage did vary. In answer to cross-examination he expressly said that he did not give the same percentage every month. Of course in July 1981, Ling made three payments - the same for June 1982. But one would see that no payment was made in June 1981 and August 1981. Ling also said that one of the payments made in July 1981 was for the appellant's holiday. This was borne out by the following cross-examination:

Q: On 23 May, $2,000; 4 July you gave him $2,000; on 7 July another $2,000. I suggest to you that the first payment in July was probably for June?
A: Yes.
Q: The fourth payment of $2,000 was on 21 July but you didn't pay anything in August?
A: No. One of the cheques given to the accused was for his holiday.

Similarly no payment was made in April 1982 and May 1982. It should therefore not be hard to see why three payments were made in June 1982. I must, however, observe that Ling was not cross-examined on the three cheques given in June 1982. Ling was also not cross-examined on his evidence that two cheques for the sum of $2,000 were given on 12 June 1982. He was not asked to explain. It is too late for the appellant to complain. In any case, I do not see anything incredible about Ling giving two cheques that day.

The fact that two cheques eventually found their way into the account of a limited company, Grand Classics (Pte) Ltd is again neither here nor there. As should be obvious, cash cheques can be credited into any account. I do not find it of any significance that they were paid into the account of Grand Classics. As Ling said he gave the cash cheques to the appellant. It would have been an easy matter for the appellant to have the cheques exchanged with another for cash. None of the cheques had the appellant's signature on the reverse side of the cheque indicating that he cashed it.

As regards the documentary evidence on the 15 payments, it was true that the documents did not reflect the payments to the appellant in a consistent manner. But that was only to be expected, bearing in mind the nature of such transactions and the fact that they stretched over a long period. If anything at all, it merely showed that Ling had not been very consistent in trying to reflect these payments in his records. Considerable emphasis was placed

on the fact that one payment voucher (exh P82) indicated that the sum was paid to 'Choo Ling Engineering Works'. A partner of Choo Ling Engineering Works (PW9) said that he was never paid anything more than $300 at a time. He said payments to him were always in dribs and drabs. Ling never said that a sum of $2,000 was paid to Choo Ling Engineering Works. The cheque was of course not given to Choo Ling Engineering Works. What Ling, in effect, said was that that statement in the payment voucher was just a cover up.

Ling said he did not think that it was wrong for him to give money to the appellant. Counsel suggested that the way in which Ling tried not to disclose the name of the appellant on the cheque stubs and the payment vouchers indicated otherwise. Ling explained, 'I don't want it to be shown in the account he had taken too much money.' He admitted that it was embarrassing. In my view there is nothing here which really discredited Ling: his explanation seems reasonable enough. In any event I do not think this point is so material as to affect his evidence generally as the district judge had found him to be a witness of truth.

Then there was the evidence relating to the loan of $200,000 from one Ramesh to Ling in respect of which Ling gave ten post-dated cheques of $26,000 each. The interest to be charged was 3%. In my view it is so obvious that it must be 3% pm and not 3% per year. No moneylender in his right mind would lend money at 3% pa. Two hundred thousand at 3% pm, over ten months, on a non-reducing basis, works out to $260,000. The evidence was that only three out of the ten cheques issued by Ling had been banked in. Counsel asked why weren't the other seven cheques banked in. The answer to this question is again quite extraneous to the 15 charges. In any event I would observe that the time for banking in the fourth cheque almost coincided with the commencement of the investigation by CPIB into this matter which eventually led to the present prosecution.

Having reviewed the record of appeal, I am of the opinion that there was ample evidence both oral and documentary for the district judge to have found the appellant guilty of each of the 15 charges. No reasonable doubt has been raised. The district judge has heard Ling and believed what he said. This was not a case where Ling went on his own to report the appellant's misdeeds to CPIB. The appellant could not give any reason why Ling would want to incriminate the appellant if the allegations were not true. They got on well and Ling was grateful. But faced with the CPIB investigation into his books, Ling had to come out with the truth. Counsel said that the district judge placed too much emphasis on the meeting at Merlin Plaza. I do not think so. It seems to me that the district judge dealt with that matter in some detail because of the submission of counsel for the appellant at the court below. That incident went to show the state of mind of the appellant as soon as the CPIB commenced their investigation. In his CPIB statements, the appellant initially denied that he went to meet Ling at Merlin Plaza on 2 January 1983. Counsel for the appellant sought to play down the significance of that denial on the ground that it arose out of a confused state of mind. If the meeting at Merlin Plaza was as innocuous as the appellant and Ramesh (who testified for the defence) made it out to be, why should the appellant even deny that he was there? In any event, the district judge after hearing the evidence rejected the appellant's version of what was the object of the meeting at Merlin Plaza and what transpired thereat. He found that the appellant was 'the instigator of the meeting for the sole purpose of persuading and deceiving the two Lings (Ling and his son) to change their statements to the CPIB'. The district judge appeared to have borne this particular incident in mind in determining whether the appellant was guilty of the 15 charges. In my view, he was justified in so doing. It was clearly relevant to the 15 charges: see illus (e) to s 8 of the Evidence Act. It was conduct consistent with that of a guilty mind and the district judge was entitled to draw such inference therefrom as he deemed fit. One final point: Counsel asked if it was likely that a bank officer would accept a bribe by way of a cash cheque drawn on his own bank? Considering the nature of a cash cheque and how it is cashed, I do not see anything so improbable about that.

On the evidence, the district judge found that Ling was a witness of truth. There is no reasonable ground for me to disturb that finding. Accordingly, the convictions of the appellant on the 15 charges are neither against the weight of the evidence nor wrong in law and should be upheld. Lest the same criticism be made that I have not dealt with all the detailed points raised by counsel, let me say that I have considered them but have not been persuaded by those points.

I now turn to deal with the charge involving the taking out of a life policy of a million dollars by Ling. It was not in dispute that the appellant was, in fact, an authorized agent of the AIA. There was no evidence that Ling knew of this fact. Ling denied such knowledge. The appellant said in his defence that he informed the previous chief manager of BNP that he was such an agent of AIA. However, in his earlier statement to the CPIB, he said that he did not so inform his superior officer. Not that it is material to the charge, it seems clear to me that the appellant was moonlighting.

On this charge, the district judge said, inter alia, this:

> Ling also told the court that the accused asked him to take out a life policy ... The reason being that Ling had used so much money in his account and should anything untoward happen to him, the bank would be protected ... For this policy the accused obtained a commission of $13,278. It is clear from the evidence ... the accused was playing on the ignorance of Ling and this was a subtle way of soliciting for a gratification.

> On paper it was an insurance sale but in effect a gratification of $13,278.

Counsel for the appellant submitted that the district judge had not applied the correct test in considering the charge. He submitted that the prosecution had to show that the appellant had corruptly obtained the sale of the policy to Ling as an inducement to the appellant in permitting Ling to draw on the account in excess of the authorized overdraft limit. He said it was wholly untenable for the district judge to just say 'It is clear from the evidence ... the accused was playing on the ignorance of Ling and this was a subtle way of soliciting for a gratification. On paper it was an insurance sale but in effect a gratification of $13,278.'

Whether a payment was corruptly obtained and accepted is a question of fact to be determined by the court in the light of all the circumstances of each case: *Mohamed Ali bin Mohamed Iqbal* v *PP*.[4]

Ling said in evidence that he took out the policy because the appellant asked him to 'so that should anything happen to (him), the bank would have a guarantee'. The appellant had also told Ling that he 'had used so much money of the bank'. This was what Ling said in cross-examination:

> Q: This was for your protection and the accused discussed it with you?
> A: He said since I owed the bank so much money, it was better for me to take out a life policy.
> Q: That was how the life policy came about?
> A: I took out the policy because the bank wanted more security in view of my outstanding debt.

On this evidence of Ling, it was clear that pressure was brought to bear on Ling to take out the policy. While it was not in dispute that a life policy was in fact issued by AIA in favour of Ling, a fact which the district judge was aware as the district judge had observed 'on paper it was an insurance sale,' that did not necessarily mean that the receipt of the commission by the appellant from the sale could not be corrupt. The charge itself was on the premise that a genuine policy was issued by AIA to Ling. The relevant part of the charge reads:

> You, on or about 16 February 1982 ... did corruptly obtain for yourself a gratification in the form of the sale of a life policy to one Ling ... for which you subsequently earned a commission of $13,278 from AIA as an inducement to do an act in relation to your principal's affairs, to wit, granting overdraft facilities to Asiaweld Shipbuilding Pte Ltd in excess of the authorized limit ...

Having regard to what Ling said as the reason why he took out this policy and also to the state of account of Asiaweld Shipbuilding on 16 February 1982, I am satisfied that the conviction is correct and that the appellant did corruptly obtain a gratification of $13,278.

The submission of Mr Cashin in the court below was primarily based on the evidence of the appellant that Ling took out the policy on his own free will for the benefit of his wife and family so that if Ling should die the property of his wife to be mortgaged to the bank would not be seized by the bank. The district judge obviously did not accept this version of what transpired between the appellant and Ling. I do not think there is anything in the evidence which suggests that the district judge was wrong to reject that. Mr Cashin further made the point that if BNP had required the policy as additional security it would have asked Ling to assign the policy to BNP as was normally the case. But we know as a fact that the bank did not require the additional security of a life policy from Ling. Mr Kettler said so and he also said, 'life insurance is very costly and I believe very few people would in fact agree to such a condition'. He said life policy would only be required for private lending, eg loan to purchase a home. Be that as it may, the important point that counts is, what did the appellant tell Ling to induce him to take out the policy? The fact that the policy was not assigned to BNP is quite immaterial.

Second group of charges

There are five charges under this group, four of which relate to the receipt of four sums of money from Firoz Khan. The fifth relates to the taking out of a life policy by Firoz Khan in respect of which the appellant earned a commission of $12,168. Firoz Khan was a director of Aisha Pte Co, which company had an account with BNP with overdraft facilities.

The first payment was alleged to be made on 13 March 1980. Firoz Khan said that on that day he issued a cheque for $10,000, went to the bank to cash it and gave $9,000 to the appellant in the latter's office. When asked to explain how it was that the reverse side of the cheque did not bear his signature, as he claimed he had gone to cash it, he offered two explanations, none of which appeared sensible. Eventually, he said that 'it is *possible* that I *may* have someone with me at that time whom I *might* have given the cheque to cash when I was with the accused.' He was vague indeed and was just speculating. It is therefore essential that his evidence should be scrutinized carefully.

Another significant aspect relating to the first payment is this. The relevant cheque stub has the following entry 'cash - loan to Mr Stephen Tan'. Stephen Tan was a colleague of Firoz Khan. On the evidence of Farouk Khan (PW37) the court was told that Stephen Tan disappeared after owing Aisha a large sum of money. He said Aisha had been lending money to Stephen Tan over a period of time. However, under cross-examination, Firoz Khan said that he had only one or two dealings with Stephen Tan and he denied Aisha ever lent money to Stephen Tan. This was a clear contradiction on a material point between two prosecution witnesses which was not addressed to and reconciled by the district judge. Further,

when asked how it was that he made such an entry when the money was, according to him, given to the appellant, Firoz Khan explained that he could hardly have written the appellant's name on it. He said he had to be subtle. Yet in the cheque voucher (exh P119) issued on the occasion of the second payment of $5,000 made on 6 October 1980, he expressly wrote the words 'Paid to Jayaram'. When confronted with such inconsistencies he said it was irresponsibility on his part to have written the words 'Paid to Jayaram' in exh P119. I would observe that the cheque stub for the second payment of $5,000 also had this entry 'Jayaram - commission'.

The evidence of Firoz Khan as to the place where he made the second payment of $5,000 to the appellant was also unsatisfactory. In examination-in-chief, he said this was paid to the appellant at the Hyatt Hotel on a Saturday afternoon. When confronted that 6 October 1980 was a Monday, he clarified:

> I made four payments. Once at the Hyatt, the others at his office. But I cannot say which cheque was cashed for which payment. I remember the $9,000 was sure paid in his office.

There was a lapse of about ten months before the third payment was made on 25 August 1981. Firoz Khan said a month after the second payment, he encountered obstacles in operating the account. When pressed for specifics, he said, 'a number of times large amount ... would be returned.' He explained:

> I don't know how many times I said this. The money that was given to the accused was not given immediately after the favour was granted. Four payments were made over a period of time for consideration of assistance in granting extra credit line beyond what was granted by the bank, going through the statement does not help us one bit.

But on Firoz Khan's evidence a letter (1 September 1981) was written by the appellant warning Aisha not to issue cheques without sufficient funds (exh P122). That was barely a week after the alleged third payment was made. Such acts on the part of the appellant in dishonouring two cheques and writing the warning letter did not appear to be consistent with the conduct of a person who barely a week ago had received $5,000 as reward.

According to Firoz Khan, he was upset enough to report to Mr Souloumiac (PW1), an operations manager, and Mr Kettler (PW2) the second man in BNP. The appellant knew PW1 quite well. It would have been an easy matter to set up a trap. Yet that was not done. He said, 'it is not in my nature.' Further, he said he asked PW2, 'do you sanction the fact that I have to continue to pay?' and PW2 replied, 'For now' or words to that effect. However, PW2 said that Firoz Khan told him that 'Jayaram was asking for money to get better facilities and that he was not prepared to do so.' Firoz Khan did not tell PW2 that he had paid bribes to the appellant. Firoz Khan only asked PW2 for a change of officer. If Firoz Khan did in fact tell PW2 that he had been paying bribes to the appellant, then the subsequent conduct of PW2 was totally inexplicable. According to PW1, the complaint of Firoz Khan to PW1 was that Firoz Khan wanted an increase in the facility but Firoz Khan could not get it 'because Jayaram was asking for money and he (Firoz Khan) did not want to give.' Both PW1 and PW2 did not appear to believe Firoz Khan's complaint that the appellant was asking for money as they took no action on the complaint.

I am afraid these are points which go to the very credibility of Firoz Khan and should have been examined more carefully. They were not touched on by the district judge. Take the alleged first payment of $9,000 - the evidence of Firoz Khan was in direct conflict with what was stated on the cheque stub: 'loan to Stephen Tan.' Farouk Khan (PW37), the brother of Firoz Khan, told the court that Stephen Tan had been taking loans from Aisha. Firoz Khan tried to explain why the cheque stub entry was written in that way. He said he had to be subtle. Yet, he was not very subtle when it came to the second payment. If it were just a matter of not being consistent in the maintenance of record it would not have been of such great significance. But here there was evidence (at least from Farouk Khan) that Stephen Tan had been taking loans from Aisha. What made the judge think that the $9,000 could not be a loan to Stephen Tan, bearing in mind that Firoz Khan was even confused as to how the cheque was cashed as mentioned above. The district judge did not explain how he reconciled these. The answers are certainly not apparent from the evidence. In the circumstances, the conviction on the four charges should not be allowed to stand.

As regards the charge involving the life policy taken out by Firoz Khan, it was true that in his evidence-in-chief he said that he never believed in life policy. Firoz Khan said that the appellant had suggested to him that his request for facilities would be granted if he took out a policy for a million dollars making Aisha Pte Ltd the beneficiary.

However, I note that Firoz Khan had frequently been to Mount Elizabeth Hospital as he was then suffering from a kidney ailment. It was while Firoz Khan was in hospital that the appellant spoke to him about life policy. The following questions and answers in cross-examination are pertinent:

> Q: I suggest to you, you went into hospital and had this talk with the accused, and he pointed out to you if you were to die, your company would be left with the debt and the security would be exhausted in paying this debt?
> A: Yes.
> Q: I suggest to you that what he said struck you (as) good sense?
> A: I suppose that is fair.
> Q: It was only then you took out this policy?
> A: Following that I took the policy.
> ...

Q: At what stage your OD came down?
A: Early '83.
Q: Then there was no necessity to keep the policy?
A: Yes.
Q: Was that why you did not continue your policy?
A: I allowed it to lapse.

In re-examination, Firoz Khan said that he took the policy because the appellant asked him to.

The district judge found that the appellant's motive in broaching the subject of a life policy was prompted solely by the appellant's own interest and the interest of the bank; it was not prompted in the interest of Firoz Khan and his family. Counsel for the appellant submitted that the district judge did not apply the correct test in determining the guilt of the appellant on the charge.

Being a part-time AIA agent, of course, it would benefit the appellant if he could sell the policy to Firoz Khan. The appellant's motive in wanting to make some money out of the sale of the policy could not be in doubt. However, that was not really the point. As indicated above, when dealing with the charge involving Ling, there must be more than just the sale of a policy by the appellant to an account holder to constitute the offence of corrupt gratification. The point or the test must surely be whether the appellant did apply undue pressure on Firoz Khan and whether that was the reason why Firoz Khan took out the policy. It was not denied that it was the appellant who raised the subject of a life policy when Firoz Khan was in hospital for an ailment. When compared with Ling, it seems to me that Firoz Khan was very much a man of the world. Whereas the district judge noted that Ling was 'a rather simple-minded man and was easily misled', he did not say the same of Firoz Khan. Firoz Khan is from a business family. His father is a well-known businessman. Firoz Khan had no misconception of a life policy. He answered in cross-examination that the reasoning which the appellant gave him for taking out a life policy did make good sense and thus he took out the policy. The district judge did not seem to have adequately considered this important aspect of the evidence.

It must also be borne in mind that Mr Kettler (PW2) said that he had no objection to his staff selling insurance to customers provided it was not carried out during working hours and there was no conflict of interest. No suggestion was made that there was a conflict situation here. As the district judge did not appear to focus his mind on the right issues and/or sufficiently consider the evidence in determining the guilt or otherwise of the appellant, and as it has been shown in relation to the other four charges that the evidence of Firoz Khan was less than reliable, the conviction on this charge must also be quashed.

Third group of charges

Under this group there are two charges, both involving one Cheo Boon Teong ('Cheo') who said that he gave to the appellant $5,000 on 21 October 1981 and $6,500 on 4 December 1981. At the relevant time, Cheo was a director of Haifung Shipping and was also the shipping adviser of Lotus Agencies. Then Haifung Shipping had an account with BNP with overdraft facilities. Lotus also had an account with BNP but without overdraft facilities.

Sometime in August 1981 the overdraft facilities granted to Haifung was increased from $1m to $1.5m. Cheo was grateful to the appellant for the assistance he had given in obtaining the increased overdraft and also for the indulgences the appellant granted to Haifung. He issued a cash cheque for $5,000 and asked a staff, one Leo Teng Kit ('Leo') to cash it. Leo gave the $5,000 to Cheo. Subsequently, Cheo placed the $5,000 into a red packet and that packet was put in a white envelope. Cheo then asked Leo to deliver the envelope to the appellant at his office. Leo did not see what was placed into the envelope which he delivered to the appellant. The cheque issued was from the account of Lotus Agencies. The relevant cheque stub had this entry 'Cash (Haifung Shipping Pte Ltd); cash advance on accounts'. Cheo explained that he had used Lotus Agencies account to pay the bribe because the account of Haifung had by then exceeded the overdraft limit.

As regards the second payment involving $6,500, Cheo said that he issued a cash cheque for $6,500, had someone cash it and gave the sum in cash to the appellant in the latter's house after the latter and his family returned from a holiday to New Zealand in November 1981. This sum was given in appreciation of the assistance rendered by the appellant in granting a temporary overdraft to Lotus without security as and when Lotus was short of money. The monthly statement of accounts clearly showed the instances when temporary overdraft was granted by BNP. The relevant cheque stub showed that the original entry was blanked over and in its place was written the following: 'Cash - special bonus for cleaning hatches and lashing of deck cargoes.'

Counsel for the appellant submitted that the conviction on these two charges cannot stand on a number of grounds. The main ones appear to be these. First, in relation to the first charge, the district judge was wrong to say that there was corroboration of Cheo's evidence by Leo, the messenger sent by Cheo to cash the cheque and subsequently was sent by Cheo to deliver a white envelope to the appellant. Cheo's evidence was that he placed the cash of $5,000 in a red packet which in turn was placed in a white envelope. It is true that Leo did not see the cash of $5,000 being placed in the red packet which in turn was put in the white envelope. But Leo's evidence corroborated Cheo's evidence on the fact that he was sent by Cheo to cash the cheque; that Leo handed the cash to Cheo and that Cheo sent him to deliver a white envelope to the appellant at BNP. The court was also told by Leo that

when Cheo handed the white envelope to Leo, Cheo told Leo that the white envelope contained a red packet which in turn contained the $5,000. I think there can be no doubt that Leo's evidence corroborated Cheo's evidence on some material particulars. In any event, a court could convict on the uncorroborated testimony of an accomplice: s 135 of the Evidence Act.

Second, in relation to the second charge, Cheo said that he wanted to hide the fact that the payment was made to the appellant and thus told Connie Lam, his clerk, to record in the books that the payment was a special bonus made to the staff though he also told her that the money was meant for the appellant. Yet in the record book (exh P154) Connie Lam expressly stated that the payment was 'actually paid to Mr Jayaram'. Her explanation for these words were 'I wrote the words ... because it was a cash cheque and nobody signed for the receipt payment voucher.' Counsel submitted that she was inconsistent: if she was prepared to state in the record book that payment was actually for the appellant, why then did she have to blank out the original entry in the cheque stub and make a different entry in its place. I do not think her explanation is in any way unbelievable. We must bear in mind her duty as the accounts clerk. It has not been suggested that she had anything against the appellant.

Thirdly, Cheo said that other than these two payments he did not make any other payments to Jayaram. Yet in the record book there were two entries which seemed to indicate that one more payment and a gift were given to the appellant. One entry on folio 104 of exh P154 read as follows: 'Cash Haifung Shipping Pte Ltd - advance.' Just above the word 'advance' were the words 'for Jayaram' written in small letters in pencil. Connie Lam said that those two words were written by her. Another entry on folio 188 of exh P154, had the following statement: 'Haifung Shipping Pte Ltd - purchase of gift for Mr Jayaram' and the amount shown against that item was $5,000. When confronted with these two entries Cheo's answer was: 'I don't remember.' Counsel sought to rely on these two additional entries in the record book to show that the record book was cooked-up. This was denied by Cheo. Cheo did say early in the course of cross-examination that he did give hampers to the appellant. Connie Lam, in cross-examination, denied that she did any re-writing of the record book. I do not see how the existence of the two additional entries and the fact that Cheo could not remember them show that the two entries which are the subject of the charges must therefore be false. The district judge believed Cheo and must have found the two entries to be true notwithstanding the existence of the two additional entries in relation to which Cheo could not remember.

In my judgment, having reviewed the evidence, it has not been shown that the conviction on the two charges are against the weight of the evidence. Neither do I find that the district judge has misdirected himself or has misconstrued any material fact. I would uphold the two convictions.

Charge involving Haji Moosa

Haji Moosa ('Moosa') was an account holder with BNP. This charge concerned a loan of $10,000 allegedly given on 12 June 1980 by Moosa to the appellant because of the help which the appellant rendered to Moosa. The loan was by way of a cash cheque for $10,000 post-dated 30 August 1980. Moosa said in evidence that sometime before 12 June 1980 the appellant told Moosa that his father was sick. On 12 June 1980, the appellant rang Moosa to ask for a loan of $15,000. This request for a loan of $15,000 was noted by Moosa in his diary. As he could not afford to lend the appellant $15,000, he agreed to $10,000. He agreed to give this loan because the appellant had helped him on a number of occasions to negotiate letters of credit and had also assisted him in obtaining better rates for foreign exchange. Moosa post-dated the cheque 30 August 1980 as requested by the appellant. In the journal and the ledger, Moosa had instructed his bookkeeper (Nachiappan - PW19) to record this payment as purchase of coconut oil. Moosa said that he recorded the transaction in this manner because the appellant asked him not to put the appellant's name in his record books. However, in his cheque stub Moosa claimed he had made the entry 'cash and Jayaram loan.'

Moosa left for India on 6 July 1980 and only returned to Singapore on 12 November 1980. During his absence his business here was in the charge of his nephew, Mohd Thaha (PW18). On 21 August 1980 while in India, Moosa telexed Thaha (exh P127A) asking him, inter alia, to 'inform Jayaram BNP to hold my cheque until 30 September' without specifying which cheque. The reply of Thaha was on the same day and was exh D12 where it was stated 'Jayaram agreed to hold cheque.' I would observe that the district judge seemed to have overlooked that exh D12 was actually the reply to exh P127A. Then on 23 September 1980, Moosa telexed his nephew (exh P127C) to ask him to 'pay Jayaram dollars five thousand and also tell (Jayaram) balance payable next month.' Moosa must have made this request knowing that he had earlier asked the appellant to hold on to the cheque until 30 September 1980 to which the latter had agreed. The reply to this of Thaha was at exh P127D where he informed Moosa that the appellant had given the cheque to another party and exchanged cash and that that party would be drawing the money that week and it was not good to stop the payment then. However, as the subsequent bank statement showed, the cheque which was allegedly issued on 12 June 1980 was in fact cashed on 1 September 1980.

Counsel for the appellant submitted that the conviction cannot be sustained on, inter alia, these grounds:

(i) the district judge erred in saying that the evidence of PW18 (Thaha) substantially established the case against the appellant on the charge.

(ii) The district judge did not even bother to address the question whether it was likely that a person who wanted a loan because his father was ill would ask for a post-dated cheque of more than two months?

(iii) Moosa said he wrote on the cheque stub 'cash and Jayaram loan' but his bookkeeper Nachiappan said that the cheque stub only had the words 'cash' on it and thus he had to ask Moosa what that cheque was all about so as to make the necessary entries in the journal and ledger. On being cross-examined regarding this discrepancy, Moosa admitted 'possibly one of them was wrong.' The district judge did not allude to this discrepancy. Further, this crucial cheque stub had been missing.

(iv) Nachiappan initially said that he made the entries regarding this cheque in the journal and ledger sometime within the first ten days of October 1980 after receiving the September 1980 statement from the bank. Later when it was shown that Nachiappan could not have made the entries in October 1980 because he was not in Singapore, he said that he must have made the entries in January 1981 after his return from India. Thus the reliability of the entries in the journal and ledger was doubtful.

Counsel submitted that besides the error made by the district judge on point (i) above, the district judge, in failing to address the issues set out in points (ii), (iii) and (iv) showed that he did not carefully examine the evidence notwithstanding that the district judge stated that he had done so.

I have scrutinized the evidence relating to this charge and would agree with counsel for the appellant that the district judge had placed unwarranted significance on the evidence of PW18. He remarked that the correspondence referred to by PW18 was 'solid documentary evidence'. All that the correspondence showed was that PW18 was asked by Moosa to contact Jayaram to hold on to a cheque until 30 September. There was no reference to any specific cheque, and in so far as PW18 was concerned he had no idea which cheque was being referred to. The fact that there was this correspondence between Moosa and PW18 was not in dispute. But there was nothing in PW18's evidence which suggested that the cheque referred to in the correspondence had anything to do with the cheque which was allegedly issued on 12 June 1980 to the appellant as a loan. More importantly, the correspondence, particularly exhs P127A and D12, showed something else very significant. They showed that Jayaram agreed to hold on to the cheque until 30 September 1980. Yet from the bank's statement we know that the alleged cheque given as a loan was, in fact, cashed on 1 September. This is a clear discrepancy. Did the correspondence refer to the same cheque or to a different cheque? In my judgment, the district judge had misconstrued the evidence of Thaha and placed on it such significance which was not warranted. On this ground alone, I would have to allow the appeal on this charge.

Moreover, when viewed in conjunction with grounds (ii) and (iii) listed above, the case for setting aside the conviction becomes all the more compelling. The judge should have addressed the issue: would a person ask for a post-dated cheque (for more than two months) if he wanted a loan because his father was sick? There might be an answer but it certainly was not apparent from the evidence. Even Moosa was not able to answer that question. All he said was that that was what the appellant asked him to do. This point goes to the root of the question of the loan and by not addressing it I am of the view that the district judge has failed to consider a material issue. Similarly, on the point regarding the discrepancy in the evidence of Moosa and Nachiappan as to what was written on the cheque stub, the district judge merely recited the facts as stated by Moosa without so much as to state whether or not he accepted the version given by Moosa in preference to the version of Nachiappan. On cross-examination even Moosa conceded that one of them could be wrong. And if it were Moosa who was wrong, this must have some effect on his other evidence. I am not given the benefit of the district judge's thinking on this.

Sentence

The grounds upon which counsel for the appellant argued that the sentences imposed are manifestly excessive are these:

(a) The district judge erred in law to take into account the fact that the appellant had tried to suborn prosecution witnesses in imposing sentence.

(b) The district judge did not give adequate or sufficient consideration to the following matters:

(i) The bank was not the complainant and had suffered no loss.

(ii) In so far as the charges involving Ling and Cheo are concerned, the appellant never solicited the bribes in question from those two persons.

(iii) The appellant was not a public officer.

(iv) For the appellant, this case involved not just the loss of a job, but an entire career in the banking field.

On the first ground, counsel relied on the case *R* v *Quinn*,[5] a decision of the Court of Criminal Appeal, where Hewart LJ said:

> In view of the statements of the deputy chairman it appears to this court to be clear that some part of this sentence is to be attributed to the fact that, in the view of the deputy chairman, the appellant had given false evidence. If false evidence is

given there are appropriate ways of dealing with the offence. In our opinion, it is not correct to increase a sentence on that ground. That is, in effect, to find the prisoner guilty of perjury without a charge and without a trial and to punish him for that offence.

As the appellant was not charged and convicted of the offence of suborning witnesses, the district judge was, on the authority of *Quinn*,[5] wrong to have taken that fact into account in determining sentence.

I accept the submission of counsel for the appellant that it was through hard work and determination that the appellant managed to rise from a clerk after leaving school to being a senior officer with BNP. Through self-study he obtained two professional qualifications, the Chartered Institute of Secretaries and the Institute of Bankers. Now everything is in ruins for him.

Counsel also submitted that in view of the long lapse of time since the commencement of the present proceedings it would not be fair to put the appellant through a term of imprisonment and that a fine should be adequate. Counsel said that the appellant was convicted and sentenced by the district judge on 28 August 1984. Notice of appeal was filed on the same day. The grounds of decision of the district judge were dated 31 August 1985. However, the record of the proceedings was not made available to the appellant until 15 January 1988. Neither counsel for the appellant nor the DPP was able to inform me of the cause for the delay. Be that as it may, I do not see any prejudice to the appellant by the delay. He has been on bail. The case *Voon Chin Fatt* v *PP*[6] is clearly distinguishable.

Having considered all the circumstances, it seems to me that a fine would be wholly inadequate for the offences which the appellant has committed. This is not a case of the receipt of an isolated corrupt gratification. In so far as the charges involving Ling are concerned, they stretched over a period of 16 months. Though the appellant did not ask for it, he willingly accepted every offer of gratification by Ling. The amounts involved were substantial. The appellant had abused a position of trust. A custodial sentence is called for. However, taking into account the grounds advanced by counsel in (a) and (b) (ii), (iii) and (iv) above, including the fact that the appellant previously had a clean record, I agree that the sentences imposed are manifestly excessive and would reduce them as follows:

DAC 2369/83	:	six months to three months
DAC 2370/83	:	six months to four months
DAC 2371-2375/83	:	three months (each charge) to two months (each charge)
DAC 2376-2377/83	:	two months (each charge) to one month (each charge)
DAC 2378-2385/83	:	three months (each charge) to two months (each charge)
DAC 2386/83	:	12 months to 6 months

The sentences imposed by the district judge on the five charges involving Firoz Khan and the one charge involving Haji Moosa are set aside as the appeal on those charges are allowed.

I order that the sentences for DAC 2370/83, DAC 2371/83 and DAC 2386/83 be served consecutively and the other sentences be served concurrently with the said three sentences. In short, the appellant is to serve a total prison term of 12 months. In addition, the appellant shall also pay a penalty of $54,078 as required under s 13(1) of the Act. In the result the appeal is allowed to the extent as indicated above.

Appeal allowed in part.

Solicitors: *Pala Krishnan & Partners.*

Reported by *Terence Tan Bian Chye.*

Lim Teck Hoe v Kathleen Chia Ah Lek

HIGH COURT (SINGAPORE) - SUIT NO 4193 OF 1981
COOMARASWAMY J
23 JUNE 1989

Contract - Sale of option - Whether such sale subject to 'legal requisitions'

Evidence - Written contract - Whether oral evidence of addition to contract admissible

Land Law - Sale of option for sale and purchase - Whether subject to legal requisitions

The plaintiff brought this action against the defendant for the sum of $20,000 as money had and received by the defendant for consideration which had totally failed. The defendant had negotiated the purchase of a piece of land ('the property') with one Lim Soon Leong ('LSL') a broker of real estate. It was agreed that the price would be $155,000 for the property and another $20,000 in cash for the furniture and fittings. Pursuant to the agreement, an option was executed by LSL on behalf of the company he owned, which was the owner of the property. The defendant gave LSL two cheques, one for $5,000 being the option money and a cash cheque for $20,000. The plaintiff testified in court that following this, he 'agreed to purchase the property at $187,000 subject to legal requisitions'. Following this, the plaintiff gave the defendant a cheque for $32,000 which was to be the defendant's profit. The plaintiff exercised the option and sent some money to the vendor of the property. Subsequently, after some correspondence between the plaintiff and the vendor, the plaintiff decided not to go through with the sale and purchase of the property.

Held, dismissing the claim:

(1) The plaintiff's claim that he had agreed to purchase the property could not be right in law as the defendant had no capacity to sell. All she could do was to assign her rights under the option.